

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6450 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

AMJADAL GAZANUFALLI BUKKARI

Versus

CITY DY.COLLECTOR AHMEDABAD

Appearance:

MR MJ TRIVEDI for Petitioner

MS. HARSHA DEVANI, AGP, for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 07/10/1999

ORAL JUDGEMENT

Notice of this writ petition was issued on 2.9.1999 to the respondent. Learned A.G.P. appears for the respondent. Learned counsel for the petitioner and learned A.G.P. have been heard.

A preliminary objection has been raised by the learned A.G.P. that against the impugned order equally efficacious alternative remedy is available to the

petitioner by preferring an appeal to the Collector, hence this writ petition deserves summary rejection and the petitioner may be directed to avail of alternative remedy by approaching the Collector. It is true that when equally efficacious alternative remedy is available, writ petitions are generally not entertained and the petitioners are directed to avail of the alternative remedy. However, on the facts and circumstances of the case, by issuing such directions no fruitful purpose would be served.

The contention of the learned counsel for the petitioner is that when order of the City Deputy Collector, Ahmedabad, Annexure-A is patently erroneous and suffers from lack of jurisdiction, it deserves to be quashed. He pointed out that two objections were raised to the appeal filed before the City Deputy Collector, Ahmedabad. The first objection was that the appeal was time barred and the second objection was that the appellant in that appeal had no interest in the land nor any evidence showing interest of the appellant in the land was produced, hence he had no locus standi to file the appeal. It appears from the impugned order that the plea of bar of limitation was not touched by the appellate authority in its order. However, it was of the view that the appellant had no locus standi to file appeal and that the appellant did not produce any evidence before the authority showing his interest or ownership in the land. If this was so then the appeal should have been dismissed straightway being filed by a person who was neither having interest nor was having any locus standi to file such appeal. There was no occasion for the respondent to enter into the merits of the revenue entry in question nor he was conferred with jurisdiction in such appeal to quash such entry merely on the basis of observation that the land in question was recorded as government land. The learned A.G.P. however contends that since the land was government land, order of the respondent was justified. I am unable to accept this contention. The extent of appellate jurisdiction and revisional jurisdiction is separate. If the appellate authority came to the conclusion that the appeal was filed by a person having no right, title or interest in the land and had no locus standi to file the appeal, there was hardly any occasion to decide the matter on merits and not to dismiss the appeal being incompetent. The question of entering into the merits of the appeal therefore prima facie indicates excessive exercise of jurisdiction by the appellate authority. If on these facts the petitioner is directed to approach the State Government, the State Government will also take

same view and will dismiss the appeal that the appeal was incompetent.

If any grievance is there to the State Government that because the land belongs to the Government, entry was rightly quashed ignoring the agreement between two parties then appropriate action on the revisional jurisdiction can be taken and if such exercise is undertaken, naturally notice is required to be issued to the petitioner and thereafter matter has to be proceeded with and disposed of as required under Section 108(6) of the Rules framed under the Bombay Land Revenue Code. That exercise will not stand barred in view of the order passed by this court in this petition.

In view of the aforesaid discussion, the petition succeeds and is allowed at the admission stage. The order of the appellate authority holding that the appellant had no locus standi is maintained. As a consequence thereof the appeal of the appellant Saiyed Musamiya Imam Haiderbux Razvi stands rejected being incompetent. Further order of the City Deputy Collector, Ahmedabad, rejecting mutation entry No. 2745 of V.F. No. 6 of Mouje Isanpur is hereby quashed. It is clarified that the State authorities will be at liberty to take suo motu revisional action in accordance with the rules under Rule 108(6) of the Bombay Land Revenue Code.

(D.C. SRIVASTAVA, J)